

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35000

STATE OF IDAHO,)	2009 Unpublished Opinion No. 488
)	
Plaintiff-Respondent,)	Filed: June 4, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
STOCK WARD CHEEVER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Washington County. Hon. Stephen W. Drescher, District Judge.

Judgment of conviction for two counts of burglary, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Stock Ward Cheever appeals from his judgment of conviction for two counts of burglary. Specifically, Cheever challenges the district court's denial of his motion for judgment of acquittal based on insufficiency of the evidence. For the reasons set forth below, we affirm.

Cheever was charged with two counts of burglary, I.C. § 18-1401. At trial, evidence was presented that Cheever and a relative broke into a shop on multiple occasions and stole several tools. Footprints and tire tracks were found outside the shop after the second burglary. Cheever was interviewed by police and admitted to his involvement in the crime as a lookout for his relative, but contended that he never entered the building. Cheever later attempted to withdraw his statements, but subsequently again admitted to his involvement in the crime and asked the police if he could be charged with petit theft instead of burglary.

After the state's presentation of evidence, Cheever moved for a judgment of acquittal based on insufficiency of the evidence. He contended that the state had failed to show that he

physically entered the shop. The district court denied Cheever's motion because, based on his involvement, Cheever could be held equally culpable for the underlying crime as his relative who actually entered the shop and removed the tools. The jury found Cheever guilty, and the district court sentenced Cheever to concurrent, unified terms of eight years, with minimum periods of confinement of three and a half years. Cheever appeals, challenging the denial of his motion for a judgment of acquittal based on insufficiency of the evidence.¹

Cheever argues that the district court erred by denying his motion for judgment of acquittal because the state failed to produce any evidence that he actually entered the building. At the time of Cheever's motion, the state responded that, when two persons participate equally in a crime, they are equally culpable of the underlying offense. The district court then acknowledged that an accomplice is culpable to the extent of the principal. Trial counsel then argued that, under this theory, Cheever would have to be charged with aiding and abetting, rather than burglary. The state then responded that those who aid and abet are, by definition, principals in the charged offense. The district court agreed and further held that any challenge to the charging document would have to have been made within fourteen days after its filing. The district court then denied Cheever's motion for judgment of acquittal.

Cheever contends that the only way that he could be found guilty of burglary is on a theory of aiding and abetting because there was no evidence that he physically entered the building. Furthermore, Cheever argues that due process requires that the theory of aiding and abetting be pled in the charging document in order to put him on notice and give him an adequate opportunity to defend. Cheever acknowledges that the Idaho Supreme Court has previously rejected a similar argument and further concedes that, in accordance with Idaho state law, the charging document in this case was sufficient to plead aiding and abetting. *See State v. Johnson*, 145 Idaho 970, 188 P.3d 912 (2008). However, Cheever contends that *Johnson* is not yet good law because a petition for writ of certiorari has been filed with the Supreme Court of the United States. Cheever additionally concedes that the resolution of the petition for writ of certiorari will control the outcome of this case. The state also agrees that *Johnson* controls the outcome of this case.

¹ Cheever was also found guilty and sentenced for one count of grand theft. However, his motion for acquittal only concerned the two counts of burglary, and he does not raise any issues or challenge his judgment of conviction for the one count of grand theft.

Since the filing of Cheever's brief on appeal, the Supreme Court of the United States has denied the petition for writ of certiorari in *Johnson*. See *Johnson v. Idaho*, ___ U.S. ___, 129 S. Ct. 638 (2008). Therefore, the principles enunciated in *Johnson* are mandatory precedent for this Court. As both parties concede that *Johnson* is controlling in this case and rejects the argument which Cheever now proposes, we need not further address any of Cheever's arguments. Accordingly, Cheever's judgment of conviction for burglary is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**